

U.S. DISTRICT COURT

S. OF VERMONT

FILED

D.Vt.

05-cv-153

Murtha 2007 FEB -2 AM 9: 27

MANDATE

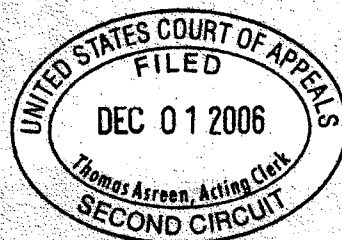
United States Court of Appeals
FOR THE
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 1st day of December, two thousand six.

Present:

Hon. Thomas J. Meskill,
Hon. Ralph K. Winter,
Hon. Peter W. Hall,
Circuit Judges.



Damian J. Renzello,

Plaintiff-Appellee,

v.

06-3714-cv (L)
06-3901-cv (Con)
06-4654-cv (Con)

Michael E. Nelson,

Defendant-Appellant.

Appellant, *pro se*, has filed numerous motions in this Court, requesting, *inter alia*, appointment of counsel. See U.S.C.A. Dkt. 06-3714-cv (Motions filed Sept. 19, 2006 and Oct. 3, 2006). This Court has determined *sua sponte* that it lacks jurisdiction over these appeals because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978); *United States v. Cambio Exacto*, 166 F.3d 522, 529 (2d Cir. 1999); see also *Equal Employment Opportunity Comm'n v. American Express Co.*, 558 F.2d 102, 103-04 (2d Cir. 1977) (orders denying motions to dismiss are generally not appealable); *U.S. Fidelity and Guar. Co. v. Braspetro Oil Services, Co.*, 199 F.3d 94, 96-97 (2d Cir. 1999) (district court orders denying motions to dismiss for lack of personal jurisdiction or improper venue are not appealable under the collateral order doctrine); see *Fort Knox Music Inc. v. Baptiste*, 257 F.3d 108 (2d Cir. 2001) (transfer orders are not appealable); *Rosen v. Sugarman*, 357 F.2d 794, 796 (2d Cir. 1966) (a denial of a recusal motion is not an appealable interlocutory order).


DEC -1 2006

- ISSUED AS MANDATE: 1-25-07

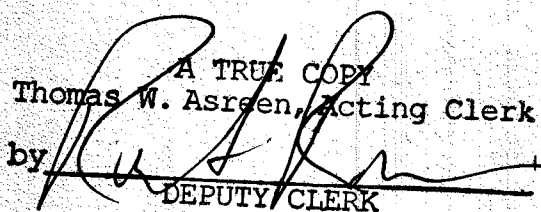
Moreover, the Appellant's requests for writs of mandamus and prohibition are denied as he has not demonstrated entitlement to those forms of extraordinary relief. *See In re Steinhardt Partners, L.P.*, 9 F.3d 230, 233 (2d Cir. 1993) (mandamus relief available where there has been a "clear abuse of discretion or a usurpation of judicial power"); *Davis v. Lansing*, 851 F.2d 72, 75 (2d Cir. 1988) (a writ of prohibition is authorized "only when a court exceeds its jurisdiction or authorized power in such a manner as to implicate the legality of the entire proceeding"). Therefore, it is ORDERED that the appeals are dismissed and all of the pending motions are denied.

Finally, the Appellant is hereby informed that this Court's docket has been revised to include an entry, indicating that the Appellant disputes the August 8, 2006 entry, which states that he had brought two previous appeals in this Court.

FOR THE COURT:
Thomas Asreen, Acting Clerk

By: 

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A TRUE COPY
Thomas W. Asreen, Acting Clerk
by 
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